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Ministry of  
Transportation and  
Communications

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**PROPOSED REGULATIONS RESPECTING**  
**TELEVISION BROADCASTING**

Response of the Government of Ontario to

CRTC Public Notice 1986-176

August 1986



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**D.G. HARTLE**



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AUG 29 1986

Mr. Fernand Belisle  
Secretary General  
Canadian Radio-television  
& Telecommunications Commission  
Ottawa, Ontario  
K1A 0N2



Dear Mr. Belisle:

Re: CRTC Public Notice 1986-176  
Proposed Regulations Respecting Television  
Broadcasting

I am pleased to provide comments on behalf of the Province of Ontario with respect to the proposed regulations for television broadcasting.

Ontario supports the Commission's adoption of a more supervisory role and the approach taken in the review of the television regulations. Ontario commends this approach, as it reflects a commitment to the objectives of the Broadcasting Act, combined with a desire to reduce the regulatory burden and maximize flexibility.

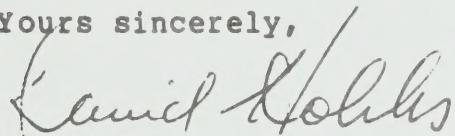
The major change in the proposed regulations is, of course, the revised approach to the regulation of Canadian content. Ontario welcomes this review of Canadian content regulation and generally supports the overall intent and thrust of the Commission as a step in the right direction. This approach, which will lead to increased expenditure on Canadian television programming as revenues grow for those broadcasters who select the condition of licence approach, is an improvement over the current time quota approach in terms of meeting several of the objectives for Canadian content regulation. However, in the attached submission, we do identify several flaws in the planned implementation of the approach and recommend that the Commission address these issues before the approach is implemented. In addition, we support the Commission's intent to review the approach in three years and suggest that an assessment of the approach's success or failure in meeting the objectives for Canadian content be included in this review. Depending on the results of the review it may be desirable at that time to consider strengthening or modifying the Canadian content regulations.



Other issues addressed in this submission are community television, Canadian content requirements for ethnic broadcasters, the definition of program categories for educational broadcasters, and a small number of specific errors and omissions in the revised regulations.

Thank you for providing an opportunity to comment on this important issue. I would like representatives of my staff to attend the public hearing scheduled for September 30, 1986 to present and discuss this submission.

Yours sincerely,



David Hobbs  
Deputy Minister



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## Executive Summary

The Government of Ontario believes that television is a powerful, pervasive communications medium, which plays a vitally important role in our nation's cultural and economic development. Ontario welcomes this review of regulations respecting television broadcasting and commends the Commission on its overall intent and its direction towards a more supervisory approach.

Ontario believes that policies and regulations for television should seek to achieve the following objectives:

- o encourage a wide range of choice in television programming and maximize consumer access to such programming;
- o foster an economically strong television broadcasting industry in Canada;
- o encourage the development of Canada's television program production industry;
- o ensure an environment of fair competition for Canadian television broadcasters when in competition with foreign television broadcasters; and
- o ensure that television regulation is flexible, so that television broadcasting can adapt and realize its potential in a rapidly changing environment of new technologies.

The major change in the proposed television regulations is a revised approach to the regulation of Canadian content. Ontario welcomes the Commission's review of regulations in this area, and believes that the proposed approach is a step in the right direction in terms of meeting several of the above objectives.



Several concerns, however, have been identified with respect to the implementation of the approach, including, for example, the need to more clearly define allowable expenditures. It is suggested that these problems be rectified prior to the implementation of the approach. In addition, Ontario suggests that the revised approach be assessed in three years, in order to evaluate its success in meeting objectives and with a view to making possible improvements to the approach at that time.

Other issues addressed in this submission are Canadian content requirements for ethnic broadcasters, community television and the definition of program categories for educational broadcasters.

Ontario's recommendations are that:

- o when a licensee applies to use the Canadian content condition of licence approach, that licensee be required to maintain a percentage of its gross revenues allocated to Canadian content expenditure which is equal to its best single-year performance since a specified implementation date established by the Commission, as opposed to its best single-year performance over the past three years;
- o the Commission determine and clearly define in advance the nature of expenses allowed to be included in the calculation of a licensee's total Canadian content expenditures;
- o each proposed condition of licence be the subject of a call for comments, and that sufficient financial information be made available in the Public Notice to ensure that Canadian content proposals can be evaluated within the public process;
- o the Commission clarify the terms and conditions of its proposed lapsing provision;



- o the Commission's review in three years of its proposed new condition of licence approach be the subject of a public hearing, and that it measure and evaluate results in the following areas:
  - improvements in the diversity of programming offered by participating broadcasters;
  - increases in the number of Canadians watching Canadian shows;
  - maintenance of the level of expenditures on Canadian programming;
  - growth in the Canadian program production and distribution sectors, and particularly in the independent production sector.
- o the issue of Canadian content requirements for ethnic television stations be addressed in the Commission's new television regulations. To ensure consistency with the proposed radio regulations, Ontario also recommends that the Commission consider lowering Canadian content requirements during ethnic programming periods;
- o the Commission clarify the extent to which its proposed new policy on community television is consistent with its existing policy on community radio.
- o the Commission revise its definition of a community television station, in order to clarify and specify ownership requirements for such stations;
- o the Commission clarify its definition of "classified announcement";



- o the proposed television program categories contained in Appendix A of the proposed television regulations be revised to include an educational category which more fully encompasses the programming of educational broadcasters; and
- o the Commission review and correct minor discrepancies in the text as outlined in this submission.



## I. INTRODUCTION

Television broadcasting is a powerful, pervasive communications medium, which plays a vitally important role in our nation's cultural and economic development.

The importance and value of television to Canadians is demonstrated by the fact that in 1985, 99% of Canadian households reported owning at least one television set, while 46% reported owning at least two. Results from the fall 1984 BBM survey show that 98% of all Canadians watch television at least once a week, and they watch an average of 23.6 hours per capita per week.

As an industry, television broadcasting generates a substantial amount of economic activity throughout the country, and is an important source of employment. The Canadian private television industry is comprised of 85 stations, of which 24 are located in Ontario. In 1984, Canada's private television stations generated almost \$900 million in total operating revenues, of which approximately 39% were generated in Ontario. Ontario's private television industry employed over 2,500 people, and paid over \$84 million in salaries and benefits. Many more people are employed in the public broadcasting sector, and in the production sector and other television-related industries.

As the conveyor of audio and visual messages into our homes, television also plays a critical role in developing, strengthening and preserving our country's cultural identity. Recognizing this, governments and regulators have designed and implemented a number of special initiatives in order to ensure that the Canadian television system expresses and encourages values and ideas which are identifiably Canadian. Many of these initiatives, such as Canadian



content time quota regulations, will be the subject of much discussion and debate during this review of the Commission's television broadcasting regulations.

As the Commission observed in its call for comments, television broadcasting is currently developing amidst fundamental changes in the broadcasting environment. One of the primary sources of change is the competition arising from new services and alternative forms of home entertainment. As the Commission is aware, developments in cable, satellite and other technologies have greatly increased and will continue to increase the number of signals available to viewers. In addition, videocassette recorders have enabled viewers to create their own viewing schedules and obtain additional programming choices from rental outlets. The introduction of pay and specialty television services has also allowed Canadians to further augment their viewing choices.

These developments have created an increasingly competitive and fragmented environment for Canada's television broadcasters. Ontario believes that in order for television to achieve its full potential in this type of environment, a flexible policy and regulatory environment is essential. As such, Ontario welcomes this review of the CRTC's television broadcasting regulations, and is pleased to have this opportunity to comment on the Commission's proposals.

As with its proposed radio regulations and the newly enacted cable television regulations, the Commission is proposing to relax its detailed regulatory approach, in favour of a more supervisory approach, believing this to be more appropriate to the contemporary broadcasting environment. Ontario supports the overall direction in which the Commission is advancing, as it is consistent with Ontario's objectives for broadcasting policy.



The Commission's approach, as outlined in Public Notice 1986-176, involved reviewing the television regulations to determine: those which are necessary to achieve the objectives of the Broadcasting Act and foster a distinctive Canadian broadcasting system; those no longer necessary to achieve the goals of the Act; those more appropriate to industry self-regulation; and those regulations which need to be updated, streamlined and clarified. The Commission is also proposing to make greater use of a condition of licence approach, upon request by licensees, to improve the quality or diversity of Canadian programs. Ontario commends this approach, as it reflects a commitment to the objectives of the Broadcasting Act, combined with a desire to reduce the regulatory burden and maximize flexibility.

The Commission's approach is generally consistent with Ontario's policy objectives, and has resulted in many positive changes to the television regulations which Ontario supports. However, Ontario has identified problems related to some of the proposed measures, particularly in the area of Canadian content regulation, which should be rectified before the changes are implemented. Ontario's comments in this area are contained in a later section of this submission.

The following section outlines a series of policy objectives which Ontario believes should guide the regulation of television. Section III identifies and contains Ontario's comments on several key issues relating to the proposed new television regulations.



## II. ONTARIO'S POLICY OBJECTIVES

In a submission to the federal Task Force reviewing Canadian broadcasting policy, Ontario advanced several key objectives for broadcasting policy. Applying these objectives more specifically to television, Ontario believes that television policies and regulations should:

- o encourage a wide range of choice in television programming and maximize consumer access to such programming;
- o foster an economically strong television broadcasting industry in Canada;
- o encourage the development of Canada's television program production industry;
- o ensure an environment of fair competition for Canadian television broadcasters when in competition with foreign television broadcasters; and
- o ensure that television regulation is flexible, so that television broadcasting can adapt and realize its potential in a rapidly changing environment of new technologies.



### III. ISSUES

In reviewing the Commission's proposed new television regulations, Ontario has identified the following key issues:

- o the new regulatory approach to television
- o Canadian content regulation
- o Canadian content requirements for ethnic stations
- o community television
- o other issues

These issues and Ontario's recommendations are covered in the balance of this submission.

#### A. The New Regulatory Approach to Television

In approaching this review of its television regulations, the Commission's stated objectives were to eliminate those regulations not essential to the achievement of the goals of the Broadcasting Act, as well as to determine which areas might be more appropriately regulated by the television industry itself through industry codes. It also sought to update, streamline and clarify some of its existing regulations.

In keeping with this approach, the Commission has proposed to delete a number of existing regulations relating to programming content, chain broadcasting, advertising, the programs of the CBC, and financial returns. In the advertising area, it has asked television broadcasters to develop industry self-regulatory codes with respect to advertising within newscasts and station contests. The Commission has also attempted to streamline and clarify its regulations pertaining to transfers of ownership and control, and is proposing to introduce new television program categories and a simplified log system.



It is Ontario's view that the regulatory framework should include only those regulations which are essential to the achievement of the objectives of the Broadcasting Act. As such, Ontario commends and supports the Commission's overall approach to this review of its television regulations, and particularly its initiatives in eliminating and modifying outdated regulations. It is Ontario's view that the Commission's proposed changes will significantly reduce the regulatory burden and the costs of regulation for both television broadcasters and the Commission.

Ontario also supports the Commission's suggestion that the television industry develop self-regulatory codes relating to advertising within newscasts and station contests. These proposals recognize the sensitivity and responsiveness of television broadcasters to the needs and preferences of their audiences.

With respect to the proposed new logs and records system, Ontario was pleased to observe that the Commission is proposing to add a code to indicate that a program contains closed captioning for the deaf and hearing-impaired. Ontario strongly supports the increased availability of closed-captioned programming, as it provides the means through which the deaf and hearing-impaired population can enjoy and benefit from the vital medium of television. The Commission's proposed addition to Schedule II will assist in documenting and monitoring the amount and types of closed-captioned programming provided by Canada's television broadcasters.



One of Ontario's key objectives for regulatory change is to encourage the Commission to base its role on the premise that activities are to be permitted unless a strong case can be made for their prohibition. Therefore, Ontario is pleased that in terms of the application of the regulations, the Commission is proposing to exclude from regulation programming broadcast in a second audio channel or a multiplex channel. Ontario believes that this will encourage broadcasters to seek opportunities to develop and provide services using these channels, such as second language audio services, supplementary sound description for the blind, and data services.

B. Canadian Content Regulation

The strengthening and preservation of Canada's political and cultural sovereignty depends on the continuous development and reinforcement of our socio-cultural fabric, which in turn is only possible if Canadians produce and consume their own messages.

Television broadcasting, through both the program production and distribution functions, plays a vitally important role in this process. A television program is, in essence, a packaged message developed and distributed for mass consumption. From its treatment of relationships, view of issues, and presentation of information, a television program conveys certain fundamental assumptions about the socio-cultural fabric from which it is derived. As such, viewing Canadian-originated programming enables us to be more in touch with the range of values, ideas and opinions which are Canadian. Moreover, it also enables us to see how new ideas and issues relate to the basic social-cultural fabric of Canada.



In addition to its role in producing such cultural messages, television broadcasting, through over-the air, cable, and satellite transmission, plays a key role in providing the means through which these messages can be distributed across a vast, diversified country.

Given this relationship between television broadcasting and political and cultural sovereignty, it is not surprising that Canadian governments have long been concerned with ensuring that our television broadcasting system remains identifiably Canadian. Since the development of television in the 1950's, successive governments have stressed the importance of a Canadian-owned and programmed system, and have sought ways to achieve the objective of increasing the availability of Canadian television programming.

While the goals established for Canadian television have remained relatively unchanged over the past few decades, their attainment has proven to be difficult. This difficulty can be attributed primarily to the economic realities facing Canadian television broadcasters, which in turn are the result of our proximity to the United States and the economics of program production.

Because of the size of the U.S. market, almost any television program can be financed by the advertising revenues derived from the domestic market, and subsequent sales around the world mean additional profits. Since U.S. program production companies largely recover their costs from the U.S. market, television programs can be sold to Canadian broadcasters at well below the cost of producing Canadian programs of comparable quality.



In addition to being less expensive to acquire, American programs also tend to generate greater revenues for Canadian broadcasters than Canadian programs. The presence of well-funded, vertically integrated companies in the U.S. has enabled the United States to become the world leader in the production, sale and promotion of entertainment product. The popularity of U.S. television programming is widespread, and even extends to countries with different languages and significantly different cultures. Canada, which shares a common border, and in many places a common language, with the U.S., is no exception to this international trend. In fact, Canada constitutes the largest international market for U.S. television programs. For Canadian broadcasters, the established popularity of U.S. programs among Canadian viewers means that U.S. programs tend to provide greater advertising revenues than Canadian programs.

Hence, for reasons relating to both costs and revenues, private Canadian television broadcasters face strong incentives to function as importers and marketers of American-produced programming. As long as inexpensive, popular and revenue-maximizing U.S. programs are available, Canadian broadcasters face few economic incentives to undertake the expense and risk of producing Canadian entertainment programming.

Because of the expense and risk inherent in program production, and the economic incentives which favour the purchase of American programs by Canadian broadcasters, Canadian governments and regulators have been required to develop and implement special initiatives and measures to stimulate the production and distribution of Canadian programs. These have included both supply-side measures, designed to increase the amount of money flowing into



domestic program production, and demand-side measures, designed to increase demand on the part of broadcasters and viewers for Canadian television programs.

Examples of existing supply options include the funding provided by Telefilm Canada and the Ontario Film Development Corporation, and tax incentives such as the Capital Cost Allowance. On the demand side, the primary emphasis has been on stimulating broadcaster demand for Canadian programming through Canadian content time quotas. Existing content regulations require Canadian broadcasters to provide 60% Canadian content from 6:00 a.m. to midnight, and 50% Canadian content from 6:00 p.m. to midnight. The CBC is subject to the more stringent requirement of 60% Canadian content both during the day and during primetime. It should be recognized that these time quotas have not been completely successful in stimulating viewer demand for Canadian programming, in that audience data shows that people are not watching Canadian programming in proportion to the amount exhibited.

To ensure that broadcasters possess the resources necessary to meet the content quotas, the Commission has adopted a number of supplementary measures designed to protect and enhance the revenues available for Canadian program production or acquisition. These include simultaneous program substitution, restrictions on the number of American stations that may be carried by Canadian cable systems, and priority carriage of Canadian signals on cable systems. The intent of these measures is to protect the revenue base of Canadian broadcasters, and to ensure that revenues derived from U.S. programs cross-subsidize Canadian productions.



In Ontario's view, the central objective of Canadian content regulation should be to reinforce Canada's cultural identity through the production and distribution of high-quality, varied programming which Canadians will choose to watch. Ontario further believes that this objective can best be achieved through balanced attempts to stimulate both the supply of, and viewer demand for, Canadian programs.

However, Ontario also wishes to stress that in order to be effective, these supply and demand initiatives will have to adequately consider and address the problems and realities of the Canadian program production and broadcasting environment. For example, these measures will have to consider and address the problem of Canada's relatively small market size, and the impact that this has on investment in, and financing of, Canadian productions. They will have to address the strong economic incentives which private Canadian broadcasters face to maximize their revenues by scheduling U.S. entertainment programs. Finally, they will have to stimulate viewer demand for Canadian programming, in an environment characterized by extensive and pervasive promotion of U.S. entertainment product.

In its new television regulations, the Commission is proposing to modify and introduce some flexibility into its existing time quota approach to Canadian content regulation. The Commission is proposing to allow a private licensee, by condition of licence, to reduce the time allocated to Canadian content over the entire broadcast day from 60 to 50 percent, provided that the licensee meets certain requirements. The requirements are that a participating licensee must maintain the proportion of its gross revenues allocated to



expenditures on Canadian programs equal to the licensee's best single-year performance over the previous three years.

Ontario welcomes this review of the Commission's Canadian content regulations. Formal Canadian content regulations have been in place since 1960 and therefore, this review is both appropriate and necessary. In addition, Ontario commends and supports the Commission's proposal to use a condition of licence approach, as this will introduce a considerable degree of flexibility into Canadian content regulation. The proposed new approach also appropriately recognizes and reflects the dual nature of our publicly and privately-owned broadcasting system, in that the proposed condition of licence approach, with its potential reduction in time quotas, is to apply only to the private sector.

It is also Ontario's view that in terms of addressing the problems described previously, the Commission's proposed new approach represents an improvement over its existing regulations, in several respects. For example, the approach explicitly recognizes that private broadcasters face strong economic incentives to acquire and broadcast American programming, and seeks to ensure that the existing level of cross-subsidization between revenues derived from American and Canadian programs is maintained. In other words, this approach will ensure that as revenues increase, expenditures on American programs by Canadian broadcasters who adopt this approach will not increase more rapidly than their expenditures on Canadian programs.



Second, among the broadcasters who choose to participate, this approach will have the impact of channeling the same amount of money or more into fewer hours of programming. It will allow broadcasters to concentrate their resources on the production of fewer, higher quality Canadian programs, rather than spreading their resources thinly over a number of lower cost, lower quality programs. While money and production value are not the same thing, there is a critical relationship between them. As such, this approach may benefit viewers, and help to encourage more positive viewer attitudes towards Canadian programming in general, and greater demand for Canadian programs.

While supporting the intent and general thrust of the Commission's proposed new approach to Canadian content regulation, Ontario also has identified several specific problems which it recommends be addressed and rectified before the approach is implemented.

First, it is Ontario's understanding that the intent of this new approach is to fix Canadian content expenditure as a proportion of gross revenues at a specified historical level, namely the licensee's best single-year performance over the previous three years. It appears from the wording of the proposal however, that the Commission has not established guidelines specifying at what point a broadcaster may choose to opt into the new system. As a result, it appears possible that a broadcaster could choose to apply for such a condition of licence at a time when the proportion of expenditures it has allocated to Canadian programming over the past three years has been relatively low.



Ontario believes that this potential problem can be avoided, while still giving broadcasters the flexibility to opt in when they choose, through the establishment by the Commission of a measurement starting date; that is, a predetermined starting date from which the measurement of broadcasters' gross revenues and Canadian content expenditures would begin. For example, the specified implementation date might be three years before the date these regulations come into effect. Ontario recommends that when a licensee applies to use the Canadian content condition of licence approach, that licensee be required to maintain a percentage of its gross revenues allocated to Canadian content expenditure which is equal to its best single-year performance since a specified implementation date established by the Commission, as opposed to its best single-year performance over the past three years.

Ontario's second concern relates to the lack of clear definition of expenses which will be allowed for Canadian programming in the proposed scheme. It should be recognized that as with any regulatory approach which focuses on revenues or expenditures, the Commission's proposed condition of licence approach could result in inefficient production in order to meet a specified expenditure requirement. Similarly, it could also create an incentive for broadcasters to invest in hardware, rather than in software. To avoid this possibility, Ontario recommends that the Commission determine and clearly define in advance the nature of expenses allowed to be included in the calculation of a licensee's total Canadian content expenditures. Defining what constitutes an allowable expense in advance will also ensure that the items included in the initial calculation of a broadcaster's Canadian content expenditures will be the



same items used to monitor that broadcaster's performance after the condition of licence has been applied.

The clearer definition of allowable expenditures may also help to resolve the issue of fairness among broadcasters at the time that the condition of licence approach is first implemented. As the Commission is aware, the proportion of gross revenues allocated to Canadian content expenditures will vary among broadcasters. In some cases, this percentage figure will appear to be quite high, while in others it will be lower. These variations in turn will be due to a number of factors, such as production capabilities, the efficiency of production, deliberate programming strategies, and year-to-year differences in gross revenues. Through defining what constitutes an allowable Canadian programming expenditure, the Commission will be able to compare the exact nature of Canadian content expenditures among the various broadcasters, which will then allow it to determine whether the condition of licence percentage figure arrived at for a particular broadcaster is fair.

Ontario's third concern relates to the proposed condition of licence application process. The Commission has stated that it is currently developing an annual monitoring package that will provide it with the information required to implement and monitor this proposal. In the interim, applicants applying for a reduction in their Canadian content time requirements will be required to submit the information indicated in the proposed schedule and working sheet. While each proposed condition of license will be announced by the Commission in a call for comments, applicants will be allowed to submit the proposed schedule and working sheet on a confidential basis, if so desired.



Ontario agrees that each application for a new Canadian content condition of licence should be subject to review within the public process. At the same time however, it is very important that the public and other interested parties be given access to the information required to properly evaluate the licensee's proposal and provide meaningful comments. Obviously, this will not be possible if the information in the proposed schedule and working sheet is submitted to the Commission on a confidential basis. Therefore, Ontario recommends that each proposed condition of licence be the subject of a call for comments, and that sufficient financial information be made available in the Public Notice to ensure that Canadian content proposals can be evaluated within the public process.

Finally, Ontario notes that the Commission has also provided for an explicit lapsing provision in its proposed approach. This provision specifies that if a licensee fails to meet the requirements of the condition in any given twelve-month period, then the condition of licence lapses and the 60 percent Canadian content requirement will come into effect the following year. However, it is not clear from the wording of the proposal the length of time for which the condition of licence would be lapsed, or the procedure that a broadcaster would follow to opt back into the condition of licence approach once a lapsing provision has been applied. Therefore, Ontario recommends that the Commission clarify the terms and conditions of its proposed lapsing provision.

Ontario is pleased that the Commission has expressed an intent to review its proposed condition of licence approach after three years, and make any adjustments



necessary. It is Ontario's view that the purpose of this review should not only be to evaluate how well the specifics of the approach have been implemented, but also to evaluate how successful the approach has been in achieving the objectives and addressing the problems described previously in this submission. Specifically, Ontario recommends that the Commission's review in three years of its proposed new condition of licence approach be the subject of a public hearing, and that it measure and evaluate results in the following areas:

1. Improvements in the diversity of programming offered by participating broadcasters.

It cannot be predicted at this time whether broadcasters participating in the new approach will channel more resources into existing types of prime-time programming, such as news and sports, or whether they will seek to diversify the programming they offer by increasing the range of types of programming they offer (for example, more drama or children's programming), or by developing more programs with distinctive Canadian themes. Since one of the key objectives of the Broadcasting Act is to encourage the provision of varied and comprehensive programming, Ontario believes that the success of the new approach in achieving this objective should be carefully evaluated in three years.

2. Increases in the number of Canadians watching Canadian shows.

Evidence suggests that despite high content quotas, people are not watching Canadian programming in proportion to the amount exhibited. Ontario believes



that in order to achieve the cultural objectives of the Broadcasting Act, emphasis must be placed on producing and distributing Canadian programs which Canadians will choose to watch. The Commission's proposed new approach has the potential to achieve this objective, insofar as it will channel existing resources into fewer, presumably higher-quality programs. The exact effects however, cannot be measured in advance, and therefore should be reviewed and evaluated at the end of a three-year period.

3. Maintenance of the Level of Expenditures on Canadian Programming.

Ontario recognizes that one of the primary objectives of the Commission's proposed condition of licence approach is to ensure that increases in the price of non-Canadian programs do not reduce the funds allocated by Canadian broadcasters to Canadian programs. Therefore, it follows that in addition to monitoring and assessing the relationship which exists between audiences to U.S. and Canadian programs on Canadian stations, the Commission should also, after a period of three years, undertake an overall assessment of the relationship between expenditures by Canadian broadcasters on American and Canadian programs. This overall assessment will also allow a comparison to be made of the performance of various stations with respect to each other.



4. Growth in the Canadian program production and distribution sectors, and particularly in the independent production sector.

At this point, it is difficult to predict the impact of the Commission's proposed new approach to Canadian content regulation on the program production community, and particularly on the independent production sector. While recognizing that this matter does not fall within the mandate of the Commission, one of Ontario's key policy objectives is to encourage the development of Canada's television program production industry. Therefore, Ontario believes that it will be important to assess the growth which has taken place within the production sector at the time of the Commission's three-year review.

In sum, while Ontario supports the intent and general thrust of the Commission's proposed new condition of licence approach as a step in the right direction, it has identified several problems which it recommends be rectified before the approach is implemented. In addition, Ontario agrees that the approach should be subject to a thorough public review in three years, and has recommended several criteria to be used in assessing the success of the approach in meeting stated objectives. Depending on the results of the review, it may be desirable at that time to consider strengthening or modifying the Canadian content regulations.



C. Canadian Content Requirements for Ethnic Stations

Ontario shares the Commission's objectives with respect to Canadian programming, and supports Canadian content regulation on the principle that this regulation is necessary to achieve the goals of the Broadcasting Act.

However, due to the high costs of programming, it is difficult for multicultural stations to produce the required percentages of Canadian multicultural programming, without resorting to lower quality, "filler" material. Ontario raised this issue in its response to the Commission's call for comments on its Ethnic Broadcasting Policy, and suggested at that time that the Commission consider alternatives to the present system for multicultural licensees.

In several Public Notices and Decisions issued since then, including the Decision announcing its Ethnic Broadcasting Policy, the Commission has recognized the difficulty which ethnic television stations face in meeting existing Canadian content requirements. It has also stated its intent to consider varying Canadian content levels for ethnic program types A, B, C, D, and E.

In addition, the Commission recently addressed this issue as it relates to radio in its proposed new regulations for AM and FM radio broadcasting. The Commission has proposed to reduce Canadian content requirements for radio broadcasters during the periods when they are broadcasting ethnic programming.



Despite the Commission's announcements, and its treatment of the issue in the proposed new radio regulations, Ontario has observed that the proposed television regulations make no reference to lowering Canadian content requirements on multicultural television stations. In view of the difficulties which multicultural television stations are continuing to face in meeting their Canadian content quotas, Ontario recommends that the issue of Canadian content requirements for ethnic television stations be addressed in the Commission's new television regulations. To ensure consistency with the proposed radio regulations, Ontario also recommends that the Commission consider lowering Canadian content requirements during ethnic programming periods.

D. Community Television

One of Ontario's key policy objectives is to encourage increased public access to a wide range of high quality and diverse services. As the Commission is aware, Ontario is also concerned about the provision of broadcast services to remote and underserved areas of the province. Ontario has appeared before the Commission on several occasions to propose solutions aimed at redressing service disparities and expanding the range of programming choice available throughout the province.

As such, Ontario welcomes and supports the Commission's initiative in proposing a policy which provides for the introduction of community television services in remote and underserved areas. At the same time however, Ontario has several concerns relating to the Commission's proposed policy approach, and believes that certain issues require clarification.



First, Ontario notes that in its proposed policy, the Commission stated that "it has decided not to create a special class of licence but rather to design a licensing policy for community television in line with its policy for community radio". In reviewing the two policy frameworks however, Ontario has identified several inconsistencies between the Commission's approach to community radio and its proposed approach to community television .

One such inconsistency relates to the regulatory treatment of advertising. The Commission's policy on community radio, released in August 1985, outlines regulations specifying both the type and amount of advertising permitted on community radio stations, and these regulations clearly differ from those which apply to other types of radio stations. In its proposed policy for community television however, the Commission has stated that advertising will be permitted on any community television station, as stipulated by the regulations for all television licensees.

Ontario has also identified inconsistencies in the areas of definition and ownership. In the radio regulations, a special class of licence covers community, institutional, and educational radio. Community radio licensees who do not wish to adhere to the criteria of the special FM licence apply for an independent or first service FM licence. In addition, the definition of a community radio licence specifies that the licence must be owned and controlled by a non-profit organization.



In its proposed new community television policy, the Commission has decided not to create a special class of licence, and has instead defined a community television station as "a station characterized by the local nature of its ownership, programming and market it is designed to serve". The Commission states further that it expects a community television station to be owned and controlled by an organization whose membership is made up primarily of citizens of the community at large. It has not however, specified whether such an organization must be a non-profit organization.

It is Ontario's view that the inconsistencies with respect to advertising, definition and ownership between the Commission's two policies make the Commission's proposed community television policy difficult to interpret, and this may serve to discourage potential applicants for a community television licence.

Therefore, Ontario recommends that the Commission clarify the extent to which its proposed new policy on community television is consistent with its existing policy on community radio. In addition, Ontario recommends that the Commission revise its definition of a community television station, in order to clarify and specify ownership requirements for such stations.

In sum, Ontario supports the introduction of community television stations in remote and underserved areas. However, clarification and consideration of several issues are required before the proposed policy may be implemented.



#### E. Other Issues

In addition to the recommendations advanced in preceding sections, Ontario wishes to direct the Commission's attention to some specific problems identified during its review of the regulations.

First, Ontario has observed that in its proposed television regulations, the Commission has added new provisions relating to "classified announcements". A "classified announcement" is defined in Section 2 of the proposed new regulations as "meaning an advertisement respecting goods or services offered or sought by a person not normally engaged in the business of dealing in those goods or services". Section 11(1) states that a program consisting exclusively of classified announcements is not advertising material, as long as that program is broadcast not more than once during a broadcast day and has a duration of not more than one hour.

Ontario is of the view that the proposed definition of a classified announcement is inadequate, as it is subject to wide interpretation. For example, as it reads now, the definition could apply to a retailer who acquires and wishes to advertise a new product line which he or she doesn't normally sell. For this reason, Ontario recommends that the Commission clarify its definition of "classified announcement".



Second, Ontario wishes to point out that it does not support the proposed television program categories contained in Appendix A of the proposed television regulations, as these categories do not adequately provide for the programming of educational broadcasters. "Instructional programming" is not synonymous with the previous, and preferred, category labelled "educational programming". In addition, the sub-categories of "formal" and "informal" educational programs are too narrowly defined to encompass all of the programming of educational broadcasters. For example, programs on subjects such as culture, anthropology, and geography would not be covered in this definition. Therefore, Ontario recommends that the proposed television program categories contained in Appendix A of the proposed television regulations be revised to include an educational category which more fully encompasses the programming of educational broadcasters.

Third, Ontario has observed a discrepancy between the description in the preamble and the actual regulations, relating to the transfer of ownership or control section. The preamble states that licensees are to notify the Commission of any act, agreement or transaction whereby a person ends up controlling 20 to 39 percent of the voting shares, or over 40 percent. Section 14 of the actual regulations on the other hand, states that the Commission is to be notified of any transaction whereby a person ends up controlling a total of 20 percent but less than 30 percent of the voting shares, or over 40 percent. Ontario wishes to call the Commission's attention to this error, and suggests that the discrepancy between the text and Section 14 of the proposed new regulations be corrected prior to implementing the regulations.



Finally, Ontario wishes to direct the Commission's attention to the fact that Section 7(5) refers to "a registration number assigned by the Commission pursuant to Section 19 of the Television Broadcasting Regulations". Ontario suggests that the reference to Section 19 within Section 7(5) of the proposed regulations be deleted, since there is no Section 19 in the Commission's proposed new television regulations.

Ontario recommends that the Commission review and correct minor discrepancies in the text as outlined in this submission.



#### IV. Conclusions and Summary of Recommendations

In conclusion, Ontario wishes to commend the Commission for its overall intent and approach to the revision of regulations respecting television broadcasting. However, concerns have been identified in a number of areas, particularly regarding the revised approach to the regulation of Canadian content.

In summary, Ontario recommends that:

- o when a licensee applies to use the Canadian content condition of licence approach, that licensee be required to maintain a percentage of its gross revenues allocated to Canadian content expenditure which is equal to its best single-year performance since a specified implementation date established by the Commission, as opposed to its best single-year performance over the past three years;
- o the Commission determine and clearly define in advance the nature of expenses allowed to be included in the calculation of a licensee's total Canadian content expenditures;
- o each proposed condition of licence be the subject of a call for comments, and that sufficient financial information be made available in the Public Notice to ensure that Canadian content proposals can be evaluated within the public process;
- o the Commission clarify the terms and conditions of its proposed lapsing provision;



- o the Commission's review in three years of its proposed new condition of licence approach be the subject of a public hearing, and that it measure and evaluate results in the following areas:
  - improvements in the diversity of programming offered by participating broadcasters;
  - increases in the number of Canadians watching Canadian shows;
  - maintenance of the level of expenditures on Canadian programming;
  - growth in the Canadian program production and distribution sectors, and particularly in the independent production sector.
- o the issue of Canadian content requirements for ethnic television stations be addressed in the Commission's new television regulations. To ensure consistency with the proposed radio regulations, Ontario also recommends that the Commission consider lowering Canadian content requirements during ethnic programming periods;
- o the Commission clarify the extent to which its proposed new policy on community television is consistent with its existing policy on community radio.
- o the Commission revise its definition of a community television station, in order to clarify and specify ownership requirements for such stations;



- o the Commission clarify its definition of "classified announcement";
- o the proposed television program categories contained in Appendix A of the proposed television regulations be revised to include an educational category which more fully encompasses the programming of educational broadcasters; and
- o the Commission review and correct minor discrepancies in the text as outlined in this submission.





